

**REMARKS**

Applicants have carefully reviewed the Office Action dated October 20, 2005. Claims 1-30 are pending in this application. Reconsideration and favorable action is respectfully requested.

Claims 1-5, 10-11, 15-20, 25-26, and 30 stand rejected under 35 U.S.C. Section 103(a) as being unpatentable over *Metz et al.* in view of *Birdwell et al.* This rejection is respectfully traversed.

Applicants, in the prior response, had described the operation of *Metz*. The Examiner has stated that *Metz* describes, among other things, a unique ID associated with each of the data streams. The Examiner has referred to Column 8, lines 32-39 for this support. That portion of the specification of *Metz* is as follows:

A party providing the operating system upgrade service operates a data carousel application. With this type of application, a digital data stream cyclically repeats, and in accord with the present invention, the network carries the repeating data stream on a broadcast channel. The data stream may include video, audio, data and executable code. For an operating system download, the repeating data consists of a data file containing new operating system code.

This portion of the specification refers to nothing more than the data stream containing an operating system code. This does not discuss version numbers or anything and, therefore, this portion of the disclosure does not really discuss any type of identifying data. In general, the system will merely look for the beginning of data, download that data, if it is in an update operation. The system always downloads the information regardless of whether there is any ID or the such. There is no discrimination as to downloading this update data. The reason is that this is the only data that is on that channel and the system is expecting only upgrade information on that channel.

The Examiner has also indicated that a unique ID for each of the one or more discrete software

**AMENDMENT AND RESPONSE**  
S/N 09/417,863  
Atty. Dkt. No. PHL-Y-24,767

streams is associated therewith by an associated software vendor, the Examiner finding support at Column 9, lines 56-64. This portion of the specification is as follows:

The microprocessor of the DET 102 will check the operating system version number carried on the network for the particular type set-top terminal by comparing data contained in one of the packets from the received transport stream to data stored in the memory. If the version number for the operating system broadcast on the network is the same as the version number of the operating system currently running in the DET 102, then the DET terminates the upgrade process.

This portion of the specification discusses the concept of checking the operation system version number carried on the network with the particular set-top terminal. It does this by comparing data contained in one of the packets from the received transport stream to data stored in memory. The specification then states that if the version number for the operating system is the same as the version number of the operating system currently running, then the DET "terminates" the upgrade process. Therefore, the data must have been downloaded to initiate the upgrade process and, therefore, the version number is not utilized to "select" a particular one or more discrete software data streams. The software data stream is selected based upon the desire for the set-top box to perform an upgrade. It will go through the upgrade process during the download and terminate it if the version number is not correct. Therefore, even though there is a version number associated with the software, this version number is not utilized as a unique ID. There is no reason to provide a unique ID, as the system will automatically select the data stream based upon the fact that it is there. The unique ID is merely a terminating process. Therefore, the data will be downloaded and will actually be utilized. It is just a matter of whether the upgrade is completely performed.

The Examiner then states that *Metz* illustrates storing the software, relying on Column 9, 38-55; however, this portion of the specification merely describes that the transport stream is "captured" from the channel and then this is passed to the digital processing circuitry. From the specification, Applicants believe that the data is downloaded and the upgrade process initiated. There is no actual storage of the software prior to the performing the upgrade process. This is an executable operation on download.

**AMENDMENT AND RESPONSE**

S/N 09/417,863

Atty. Dkt. No. PHL-24,767

10

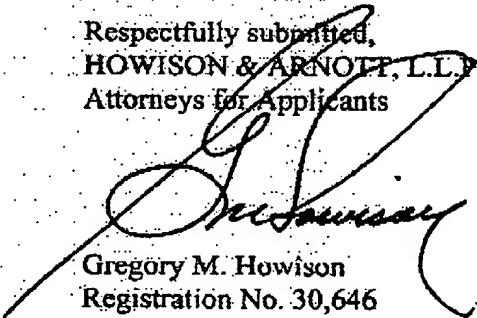
Thus, Applicants believe that this portion of the claim is not met.

The Examiner also states that "one or more software data streams are transmitted over said selected ones of said one or more broadcast channels at a scheduled time" is supported by this description at Column 8, lines 32-39. Applicants believe that this is incorrect, since only a single data stream is "repeatedly" transmitted. Therefore, there is no way to select between one or more software data streams.

Applicants believe that *Metz* is deficient in the above-noted aspects. As such, Applicants believe that the independent claims are not anticipated or obviated by *Metz*, and the addition of *Birdwell* does not cure these deficiencies. Therefore, Applicants respectfully request withdrawal of the 35 U.S.C. 103(a) rejection with respect to Claims 1-5, 10-11, 15-20, 25-26, and 30.

Applicants have now made an earnest attempt in order to place this case in condition for allowance. For the reasons stated above, Applicants respectfully request full allowance of the claims as amended. Please charge any additional fees or deficiencies in fees or credit any overpayment to Deposit Account No. 20-0780/PHLY-24,767 of HOWISON & ARNOTT, L.L.P.

Respectfully submitted,  
HOWISON & ARNOTT, L.L.P.  
Attorneys for Applicants



Gregory M. Howison  
Registration No. 30,646

GMH/sjg  
P.O. Box 741715  
Dallas, Texas 75374-1715  
Tel: 972-479-0462  
Fax: 972-479-0464  
April 20, 2006

AMENDMENT AND RESPONSE  
S/N 09/417,863  
Atty. Dkt. No. PHLY-24,767